

IN THE CIRCUIT COURT OF CLAY COUNTY, MISSOURI

STATE OF MISSOURI, ex rel.)
JEREMIAH W. (JAY) NIXON)
Attorney General,)

Plaintiff,)

v.)

Case No. _____

Division: _____

UNITED LIVESTOCK)
SERVICES, L.L.C.,)
a Missouri Corporation,)
Serve Registered Agent:)
D. Paul Tyson)
1220 Washington, Suite 300)
Kansas City, MO 64105;)

Defendants.)

**PETITION FOR INJUNCTIVE RELIEF, RESTITUTION,
COSTS AND CIVIL PENALTIES AND
APPLICATION FOR TEMPORARY RESTRAINING ORDER**

Plaintiff State of Missouri, pursuant to the Merchandising Practices Act,
§ 407.020 *et seq.*, RSMo 2000, by and through its Attorney General Jeremiah W. (Jay)
Nixon and assistant attorneys general states and alleges as follows:

1. Jeremiah W. (“Jay”) Nixon is the Attorney General of Missouri and
brings this action on behalf of the State of Missouri.
2. Defendant United Services, L.L.C., (“United”) is a Missouri domestic

limited liability company with with an office at 4100 North Mulberry, Suite 109, Clay County, Kansas City, MO 64116. It may be served by serving its registered agent D. Paul Tyson, 1220 Washington, Suite 300, Kansas City, MO 64105.

3. This Court has jurisdiction of this matter pursuant to § 407.100 RSMo 2000, which, as set forth below, allows the Attorney General to seek injunctive relief, restitution, costs and penalties in Missouri circuit court for violations of § 407.020.

4. This Court has jurisdiction over the defendant as a domestic limited liability corporation of Missouri.

5. Venue is proper in this Court under § 407.100.7 because the defendants are located in Clay County, Missouri.

6. Section 407.020 RSMo 2000 provides, in pertinent part:

The act, use, or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in Section 407.453, in or from the State of Missouri, is declared to be an unlawful practice.

Section 407.100 RSMo 2000, provides:

1. Whenever it appears to the Attorney General that a person has engaged in, is engaging in, or is about to engage any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, he may seek and obtain, in an action in a circuit court, an

injunction prohibiting such person from continuing such methods, acts, uses, practices, or solicitations, or any combination thereof, or engaging therein, or doing anything in furtherance thereof.

2. In any action under subsection 1 of this section, and pursuant to the provisions of the Missouri Rules of Civil Procedure, the attorney general may seek and obtain temporary restraining orders, preliminary injunctions, temporary receivers, and the sequestering of any funds or accounts if the court finds that funds or property may be hidden or removed from the state or that such orders or injunctions are otherwise necessary.

3. If the court finds that the person has engaged in, is engaging in, or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, it may make such orders or judgments as may be necessary to prevent such person from employing or continuing to employ, or to prevent the recurrence of, any prohibited methods, acts, uses, practices or solicitations, or any combination thereof, declared to be unlawful by this chapter . . .

6. The court may award to the state a civil penalty of not more than one thousand dollars per violation; except that, if the person who would be liable for such penalty shows, by a preponderance of the evidence, that a violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, no civil penalties shall be imposed.

7. Any action under this section may be brought in the county in which the defendant resides, where the violation alleged to have been committed occurred, or where the defendant has his principal place of business.

FACTS

7. Defendant has violated § 407.020 through its promotion and sale of a cattle investment scheme wherein it promised significant return on investment.

8. Kathleen I. McConnell is an owner and president of Professional Business Services, Inc., ("PBS") a companion company to United. On good faith information and belief, she is also an officer or employee of United. Defendant through the actions of McConnell and George Young, partial owner of both PBS and United accomplished the scheme through advertisements, seminars, and direct communications with customers.

9. On good faith information and belief, the ownership and activities of PBS, United, McConnell and Young were and are so intertwined that each of them acted on behalf and in conjunction with the other so that their actions bind and are imputed each to the other, and PBS, McConnell and Young acted as the agents for Defendant United and vice versa.

10. In communications, defendant, PBS, McConnell and Young represented themselves to be entities or individuals who had the expertise, financial capacity, and contacts with cattle producers that would result in significant profits for consumers in the state of Missouri who purchased the goods and services sold by defendant.

11. The defendant promised a high rate of return on investments by Missouri consumers by arranging for the purchase of cattle and for the care and feeding of that

cattle and by selling the cattle to processors. But the investments of Missouri consumers were not used in the manner represented. There were not enough cattle purchased to continue to support any return on investment and therefore there was a significant loss to the Missouri consumers.

12. At least one Missouri consumer was told that cattle had been sold and that she would be receiving the funds from the sale. On August 9, 2001, that consumer spoke by telephone with McConnell to inquire where the funds were as they were overdue. McConnell told her that George Young would call her the next day, August 10, 2001, and assured her that all was well.

13. McConnell provided paper work to Missouri consumers to effectuate the investments and signed the checks that investors received for the alleged sale of cattle.

14. On August 10, 2001, PBS and United ceased operations without prior warning or notice to Missouri consumers. A notice was posted on the door of the Iowa office of the two corporations stating that they had closed down. A copy of that notice is attached as Exhibit "A" and incorporated by reference herein.

MERCHANDISING PRACTICES VIOLATIONS

15. Plaintiff incorporates by reference paragraphs 1. through 14. above as if fully set forth herein.

16. Defendant has engaged in, is engaged in and likely will continue to engage

in methods, uses, practices or solicitations, or any combination thereof, declared to be unlawful by § 407.020(1), RSMo 2000. False and misleading assertions, claims and omissions of material fact made by defendant which are in violation of Chapter 407 include, but are not limited to, the following:

- a) defendant, through the use of its industry contacts and expertise, would use the consumer's funds to arrange for the purchase, care and feeding of cattle; and
- b) defendant would, through the use of their its contacts and expertise, merchandise the above-referenced cattle at top prices resulting in Missouri consumers receiving high returns as a result of their purchase of the business opportunity marketed and sold by defendant; and
- c) defendant would pay all of the funds generated by the sale of the above-referenced cattle (minus specifically identified feed and other costs) to consumers resulting in Missouri consumers receiving high returns as a result of their purchase of the business opportunity marketed and sold by the defendant;
- d) defendant sold more, or failed to purchase, cattle as represented in it marketing resulting in which is commonly known as a "Ponzi" scheme; and

e) defendant omitted to disclose to Missouri consumers the material fact that PBS and United were on the verge of closing and that they, in fact, were going to cease operation, an act that would result in Missouri consumers losing their investments in these companies.

APPLICATION FOR
TEMPORARY RESTRAINING ORDER

17. In addition to other relief set forth below, plaintiff now seeks an immediate temporary restraining order to protect the public from these unlawful and fraudulent practices and to preserve the assets which defendant may seek to dispose.

18. Section 407.100 provides this Court with the authority to issue a temporary restraining order and to fashion appropriate remedies necessary to grant relief in this action.

19. It is not necessary that the Attorney General, as plaintiff, prove the common law elements of fraud as it is the defendant's conduct, not a person's reliance on defendant's conduct that is determinative. *State ex rel. Webster v. Cornelius*, 729 S.W.2d 60, 64 (Mo. App. E.D. 1987).

20. Immediate, irreparable harm to the public is presumed for purposes of issuing a restraining order or injunction under Chapter 407 once the Court finds that defendant has engaged in unlawful practices under the statute. *State ex rel. Webster v. Milbourne*, 759 S.W.2d 862 (Mo. App. 1988) and *State ex rel. Danforth v.*

Independence Dodge Inc., 494 S.W.2d 362 (Mo. App. 1973). Nevertheless, Missouri consumers will suffer immediate harm if a temporary restraining order is not issued because defendants have engaged in the unlawful acts and practices set out in this motion and in Plaintiff's Petition for Preliminary and Permanent Injunction. As an example, consumer Mary Fritchey was told by defendants that cattle in which she had interest had been sold that she would receive the funds from that sale. When she did not receive such funds, she contacted PBS and United on August 9, 2001, and spoke with Defendant McConnell who told her that all was well and that George Young would contact her the next day. The very next day on August 10, 2001, PBS and United ceased operation and were closed without any prior notice or warning to its investors. McConnell did not inform Mrs. Fritchey during their conversation just the day before the businesses closed that they were in such financial difficulty that they would be closed the very next day. Such is an omission of material fact that violates § 407.020. The above facts are set forth in Mary Fritchey's affidavit which attached hereto as Exhibit "B" and incorporated by reference herein.

21. Missouri resident George Fritchey states that he gave money to George Young and/or PBS for three years based on the representation that Young used the money to purchase feedlot cattle. Young represented to Fritchey that the cattle had been purchased with the money and that the cattle were located on various feedlots in

Missouri. Subsequently, Fritchey went to the feedlots, but the cattle that Young had represented were there, were either not located there or were not capable of identification as being those represented by Young as belonging to Fritchey. These facts and others showing violations of § 407 by defendant are set forth in George Fritchey's affidavit which is attached hereto as Exhibit "C," and incorporated by reference herein.

22. Defendant received no less than \$3,000,000 from Missouri consumers in its scheme. Defendant and others may seek to sell livestock and other assets in Missouri owned or under the control of Defendant. These assets, which are the subject of claims for restitution, disgorgement, and civil penalties, may be wasted by defendant and thus be unavailable to satisfy any remedies fashioned by this Court.

23. Although not a prerequisite for the issuance of a temporary restraining order pursuant to Chapter 407, plaintiff has no adequate remedy at law. *State ex rel. Danforth v. Independence Dodge Inc.*, 494 S.W.2d 362 (Mo. App. 1973).

24. This temporary restraining order is being sought after the notice required by MRCP 92.02 was given to Defendant United's registered agent in Missouri, D. Paul Tyson, by letter faxed to him at 9:08 a.m., Wednesday, August 22, 2001. A copy of that letter is attached hereto as Exhibit "D," and incorporated by reference herein. Plaintiff has been unable to identify a lawyer who is serving as counsel for defendant.

RELIEF

WHEREFORE, plaintiff requests this Court to issue the following orders:

1. A Temporary Restraining Order pursuant to §§ 407.100 prohibiting and enjoining Defendant United Livestock Services, LLC and its officers, directors, agents, servants, employees, representatives, attorneys, successors, assigns, and any person or entity acting at its direction, on its behalf or in conjunction with it from:

a. Perpetrating the unlawful and unfair acts and practices enumerated herein and to cease and desist from further solicitations, promotions or activity associated with their marketing or sale of a business opportunity involving cattle in the State of Missouri;

b. Selling, transferring, concealing, disposing, wasting, encumbering or mortgaging any real or personal property or assets including cattle or any interest therein, of defendant or in defendant's possession or control, without prior authorization from this Court; and

2. An Order of this Court requiring defendant to provide the Court with an accounting of all current assets and debts held by the that defendant.

3. An Order of this Court requiring defendant to notify any holder of cattle, “caretaker,” feedlot, backgrounder or any other entity that is in possession of cattle owned or controlled by defendant of the relief granted hereunder.

4. An Order of this Court finding defendant has violated the provisions of §§

407.020, RSMo 2000.

5. An Order of this Court requiring defendant to provide plaintiff and its appointed representatives with access to all records of United and PBS including but not limited to financial records, audits, livestock inventories, bank records, investor lists, investor files, computer files, computer disks, and any and all other records that in anyway pertain to the operation of PBS and/or United and/or to funds paid to those entities or defendants by Missouri residents.

6. Preliminary and permanent injunctions pursuant to § 407.100 to enjoin defendant and its officers, directors, agents, servants, employees, representatives, attorneys, successors, assigns, and any person or entity acting at its direction, on its behalf or in conjunction with it from who have actual or constructive notice of the Court's injunction, by personal service or otherwise, from engaging in the unfair and deceptive practices set forth herein and which violate § 407.020, and barring the defendants and its officers, directors, employees, agents, successors, assigns, and all other persons, individually and in any business or corporate capacity, acting in concert with or participating with defendant from promoting or soliciting the sale of goods or services relating in any way to the sale of any goods and services relating to the merchandising of a business opportunity involving cattle in the State of Missouri.

7. An Order of this Court granting restitution pursuant to § 407.100.4.

8. An order awarding civil penalties to the State pursuant to § 407.100.6.
9. An Order requiring defendants to pay all court costs incurred in this action and all costs of investigation and prosecution of this action, including a reasonable attorney's fee incurred by the Attorney General's Office, as provided for by § 407.130.
10. Such further relief as the Court deems just and proper.

Respectfully submitted,

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